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IN THE

SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1995

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IN THE MATTER OF A MEMBER OF THE BAR OF THE SUPREME COURT OF THE STATE OF DELAWARE: SAMUEL L. GUY, ESQUIRE,

PETITIONER.

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

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# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

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## QUESTIONS PRESENTED

1. Where federal constitutional claims were not adequately presented by the Petitioner while his disciplinary case was under consideration by the Delaware Board on Professional Responsibility, and where the Petitioner also failed on appeal to adequately present the claims to the Delaware Supreme Court, does this Court have jurisdiction to review such claims?

2. Where the Petitioner was given notice of the specific factual allegations being made against him in a lawyer disciplinary case, as well as the specific disciplinary charges, and where the Petitioner was notified in writing of the date of all hearings before the Board on Professional Responsibility, and where the Petitioner was not precluded in any manner from appealing the Board's findings of his professional misconduct to the Delaware Supreme Court, was the Petitioner thereby deprived of due process under the federal constitution?

3. Where the Petitioner engaged in a disrespectful personal attack on the Chief Justice of the Delaware Supreme Court in the course of on-going proceedings before various agencies of that court, did the Board's ruling, as upheld by the Delaware Supreme Court, that the Petitioner be reprimanded violate the First Amendment of the federal constitution?

## LIST OF PARTIES

1. **Samuel L. Guy, Esquire** -- a member of the Bar of the Supreme Court of the State of Delaware, the respondent attorney in the disciplinary matter below, and the Petitioner herein.

2. **Office of Disciplinary Counsel** -- the agency of the Delaware Supreme Court charged with evaluating, investigating, and prosecuting all matters involving the professional conduct of Delaware lawyers, and the respondent herein; the agency's chief disciplinary counsel, and the person who investigated and prosecuted this case below, is David Curtis Glebe, Esquire, a member of the Bar of the Supreme Court of the State of Delaware, as well as this Court.

3. **Board on Professional Responsibility** -- the agency of the Delaware Supreme Court charged with hearing all attorney disciplinary matters, and with submitting its reports and recommendations on such matters to the Delaware Supreme Court.

4. **Delaware Supreme Court** -- the highest court in the State of Delaware, having the inherent and exclusive jurisdiction and authority over all matters in the State of Delaware pertaining to the practice of law.

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Matter of Guy, unpublished "Pre-Hearing Order", Board on Professional Responsibility of the Supreme Court of the State of Delaware, Board Case No. 55, 1992 (April 27, 1994).

Matter of Guy, unpublished "Order", Board on Professional Responsibility of the Supreme Court of the State of Delaware, Board Case No. 55, 1992 (August 25, 1994).

Matter of Guy, unpublished "Report of the Board on Sanctions", Board on Professional Responsibility of the Supreme Court of the State of Delaware, Board Case No. 55, 1992 (April 10, 1995).

Matter of Guy, unpublished Order, Supreme Court of the State of Delaware, No. 138, 1995 (September 13, 1995).

## BASIS FOR JURISDICTION

This Court lacks jurisdiction under 28 U.S.C. Section 1257 and its caselaw interpreting that statute, since none of the federal claims brought now by the Petitioner were adequately "pressed or passed upon" by the state-level tribunals below. (See infra.)

## COUNTER-STATEMENT OF THE CASE

Since the Petitioner's "Statement of the Case" contains so many statements that are not only misleading to this Court, but are outright falsehoods, the Office of Disciplinary Counsel of the Delaware Supreme Court (the "ODC") hereby presents its own counter-statement of the underlying facts of this case. References hereinbelow to the Petitioner's Appendix will be made as "PA, at ___", and references to the ODC's attached Appendix will be made as "OA, at ___".

1. **The Parties.** The Petitioner is a Delaware attorney, having been a member of the Delaware Bar since 1989. PA, at H and I. The Board on Professional Responsibility (the "Board"), as the adjudicative agency for attorney disciplinary matters for the Delaware Supreme Court, recently ruled that the Petitioner should be publicly reprimanded for having violated several of the Delaware Lawyers' Rules of Professional Conduct (the "DLRPC"). PA, at B. The Delaware Supreme Court, which has the inherent and exclusive authority in Delaware pertaining to matters relating to the practice of law, upheld the Board's findings. PA, at A. The ODC, as the Delaware Supreme Court's prosecutorial agency for attorney disciplinary matters, initiated, investigated, and prosecuted the disciplinary case (the "Board Case") which the Petitioner is now asking this Court to review. PA, at F.

2. **The Petitioner's Letter to the Chief Justice of the Delaware Supreme Court.** The Board Case began in October of 1992, when the Petitioner was not complying with a routine procedure whereby Delaware attorneys must submit their law practice books and records for examination by the Clients'

Security Trust Fund, another agency of the Delaware Supreme Court. In light of the Petitioner's recalcitrance, the ODC sent the Petitioner a letter promising disciplinary action if he did not immediately cooperate with respect to the examination. PA, at C.

The Petitioner then sent a letter, dated October 7, 1992, to The Honorable E. Norman Veasey, Chief Justice of the Delaware Supreme Court (the "October Letter"), containing a disrespectful and degrading personal attack upon the Chief Justice. PA, at D. The October Letter was referred to the ODC for disciplinary evaluation, and the Petitioner was informed by letter from the Administrator of the Delaware Supreme Court that his attempt to contact the Chief Justice directly was inappropriate. PA, at E.

3. **The Disciplinary Investigation.** Thereafter, the ODC sent a routine inquiry letter to the Petitioner, asking for his specific position as to whether the October Letter violated certain specifically-enumerated DLRPC. PA, at F. The Petitioner then sent the ODC a letter which asked various procedural questions but which was, on its face, unresponsive to the ODC's inquiry letter. PA, at G. The ODC responded to the Petitioner's letter, and informed him of the proper procedures for filing grievances against members of the Delaware judiciary and members of the disciplinary system, but informed him that since his letter was obviously not responsive to the ODC's inquiry letter, a response to that letter was still expected. PA, at H and I. When the Petitioner did not so respond, the ODC sent yet another letter to the Petitioner, asking for the third time for his position as to the disciplinary implications of the October Letter, and warning him that his failure to supply requested information would be taken as his

knowing violation of a professional obligation. PA, at H and I. The Petitioner never sent any further response to the ODC. PA, at H.

4. **The Filing of Disciplinary Charges.** In August of 1993, a Petition For Discipline was filed against the Petitioner by the ODC. PA, at H. The Petition For Discipline charged the Petitioner with four violations of the DLRPC:

first, that the Petitioner's sending of the October Letter violated DLRPC 3.5(c) (engaging in undignified or discourteous conduct which is degrading to a tribunal),

second, that the Petitioner's sending of the October Letter violated DLRPC 8.2 (making reckless statements about the integrity of a judge),

third, that the Petitioner's sending of the October Letter violated DLRPC 8.4(d) (engaging in conduct that is prejudicial to the administration of justice), and

fourth, that the Petitioner's failure to cooperate with the ODC violated DLRPC 8.1(b) (failure to supply requested information to disciplinary authorities).

When the Petitioner filed no timely response to the Petition For Discipline, the ODC moved under the Board's procedural rules to have the allegations in that Petition deemed admitted. OA, at A. The Petitioner opposed the ODC's motion, and requested that the panel of the Board then assigned to the case accept an untimely response from him. Id. In January of 1994, the Board dismissed the ODC's motion, and granted the Petitioner's motion to file an untimely response to the Petition For Discipline. The Board then indicated that a pre-hearing conference would thereafter be scheduled on notice to the parties. Id.

5. **Scheduling the Pre-Hearing Conference.** The pre-hearing conference was eventually scheduled for April 18, 1994. OA, at B. In the weeks prior to that date, the only input made by the Petitioner as to the matter of scheduling was in a letter from him to the chair of the Board, dated March 8, 1994, in which he stated that, "I am pretty much flexible with respect to scheduling a pre-hearing conference." OA, at C. Written notice of the date of the pre-hearing conference was sent to the Petitioner and the ODC by letter dated April 7, 1994, and the Petitioner was also notified directly by telephone call on April 7, 1994. OA, at B.

On the date of the pre-hearing conference, the undersigned disciplinary counsel appeared for the ODC, as did members of the panel of the Board. OA, at B. When the Petitioner did not appear, the Board ruled that the factual allegations of the Petition For Discipline had therefore been deemed admitted, and that several documents, including the October Letter and the correspondence between the ODC and the Petitioner from the fall of 1992, were put into the evidentiary record. Id. The Board issued a Pre-Hearing Order, dated April 27, 1994, setting forth its rulings, and calling for the parties to submit briefs on the disciplinary implications of the deemed admissions of the Petition For Discipline. Id.

6. **The First Hearing, and the Board's Order Finding Professional Misconduct.** When the Petitioner requested that the Board grant him a full evidentiary hearing, the Board conducted a hearing on June 13, 1994 to consider the Petitioner's request, during which the Petitioner was asked by the Board why he had failed to appear at the scheduled pre-hearing conference. OA, at C. The Petitioner's reason was that he had closed his

office during that time in order to run for political office, that he had therefore not attended to the mail sent to his post office box during that time, and that he had therefore not attended to the oral messages left on his telephone answering machine during that time. Id.

After denying the Petitioner's request for a hearing, the Board asked the parties to submit briefs on the substantive merits of the disciplinary charges. The ODC filed a timely memorandum of law, arguing that the deemed factual admissions supported all of the charged disciplinary violations. The Petitioner filed nothing at all. PA, at B. On August 25, 1994, the Board issued a comprehensive and detailed order, finding that the Petitioner had violated all four of the disciplinary charges in the Petition For Discipline. Id.

7. **The Second Hearing, and the Board's Report on Disciplinary Sanctions.** The Board then conducted, upon written notice to the parties, another hearing on March 1, 1995, to consider the issue of the appropriate disciplinary sanction to be imposed for the violations found. PA, at B. The Board then issued a report on sanctions, dated April 10, 1995, recommending the imposition of a public reprimand upon the Petitioner, conditioned upon his apology to the Chief Justice and payment of costs. Id.

8. **Review by the Delaware Supreme Court.** The Petitioner then filed a letter with the Delaware Supreme Court, dated April 12, 1995, and another letter, dated May 8, 1995, objecting to the Board's disposition of the Board Case. PA, at J and K. When the Petitioner refused to file a brief with that court, his May 8, 1995 letter was deemed by that court to be his "opening brief and

appendix". PA, at L. Consequently, there was no formal briefing before the Delaware Supreme Court. On September 13, 1995, the Delaware Supreme Court issued a brief order approving the Board's findings. PA, at A.

## ARGUMENT: REASONS FOR DENYING THE WRIT

The Petitioner's present request for a writ of certiorari to the Delaware Supreme Court, to the extent that it is even comprehensible at all, is groundless. In essence, the Petitioner is attempting to use this Court to overturn state court decisions which were adverse to him, and his couching of objections in the language of the federal constitution, without supporting analysis or argument, does not justify his petition.

First, the Petitioner failed to submit any brief or memorandum of law to the Board which heard his disciplinary case, even when he was specifically requested to do so. Moreover, after the Board's findings were sent to the Delaware Supreme Court for review, the Petitioner then refused to file a brief with that Court. At most, the Petitioner has merely made several vague and general statements to the Board and the Delaware Supreme Court as to his "constitutional rights" or his "freedom of speech" and so on. However, since he has had several opportunities to present and argue any claims relating to his rights under the federal constitution in the state-level proceedings, and has failed or refused to do so, this Court lacks jurisdiction to issue the writ.

Second, even if the Court were to conclude that it does have jurisdiction over the Petitioner's case, he has raised no issue of constitutional concern warranting the issuance of the writ. The procedural history of the Petitioner's disciplinary case is one in which the Board took many extraordinary procedural steps to try to accomodate the Petitioner, from allowing him to file a late response to the Petition For Discipline, to sending him both written and oral notifications of hearing dates. His present claim that the Board (and presumably the Delaware Supreme Court) engaged in a "racist conspiracy" to deny him due process under the federal constitution is therefore unwarranted.

Third, the Petitioner's claim that his First Amendment right of "freedom of speech" was violated is similarly groundless, since the October Letter, being a degrading and personally insulting communication directed by an attorney to a judge in the midst of an ongoing proceeding involving the investigation of the attorney's books and records, falls outside of the realm of protected speech under the First Amendment, as the decisions of this Court and other courts have established.

Finally, the Petitioner's claims that his First Amendment rights of "freedom of association" or "right to petition" have been violated by a "racist conspiracy" concocted by the state-level disciplinary officers are not even comprehensible, much less valid. Moreover, his plethora of other miscellaneous complaints are similarly baseless. Because this Court obviously need not waste its time attempting to interpret the meaning of a petitioner's inarticulable, absurd, and utterly groundless claims, even when couched in language used in the federal constitution, the petition for the writ should be denied.

**1. The Petitioner's Failure To Adequately Present His Claims Below Demonstrates His Failure To Satisfy One Of The Court's Jurisdictional Requirements.**

This Court has stated that it has no jurisdiction to hear a federal claim unless "the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system." Webb v. Webb, 451 U.S. 493, 496-97 (1981) (emphasis added).

In the present case, the Petitioner's failure to submit a memorandum of law or brief to the Board, properly dealing with any "constitutional implications" of the charges in the Petition For Discipline, and his admitted refusal to file any brief with the Delaware Supreme Court dealing with his federal claims, demonstrates that he has failed to satisfy the requirement that such federal claims be properly "raised or addressed" in the state courts. Yee v. City of Escondido, 503 U.S. 519, 533 (1992); Illinois v. Gates, 462 U.S. 213 (1983).

Although the Petitioner did make a few vague references before the Board and the Delaware Supreme Court to some constitutional principles, this Court has held that such vague references are insufficient to allow a federal claim to be preserved in the state courts for review by the U.S. Supreme Court. Bankers Life & Casualty Co. v. Crenshaw, 486 U.S. 71 (1988). In other words, mere general references by the Petitioner to "freedom of speech" or "due process" do not satisfy the requirement that federal claims be "adequately presented" on the state-court level.

Although this Court has sometimes viewed the "not pressed or passed upon below" rule as prudential rather than jurisdictional, prudential grounds are still sufficient in the present case for the denial of the petition.

Gates, 462 U.S. at 218-223. This is because of the underlying purposes of the rule. In the first place, this Court has held that state courts should be given the opportunity in the first instance to consider the constitutionality of the acts of state officials, out of the "due regard for the appropriate relationship of this Court to state courts". Id., 462 U.S. at 221, quoting McGoldrick v. Compagnie Gererale, 309 U.S. 430, 435-436 (1940). In the second place, when federal questions are not raised below, it is very likely that the record on review will be inadequate, "since it certainly was not compiled with those questions in mind." Gates, id., quoting Cardinale v. Louisiana, 394 U.S. 437, 439 (1969).

Both of these considerations apply here. Although the Board did make a few general references to the "constitutional implications" of the disciplinary violations found against the Petitioner, the Delaware Supreme Court never ruled on these questions, at least in part because the Petitioner himself refused to file a brief with that court in order to properly present such questions. The Petitioner's failure to file a brief with either the Board or the Delaware Supreme Court also demonstrates the inadequacy of the record in this case were it to be reviewed by this Court. In effect, there is very little for this Court to review, except for the Petitioner's vague and general allegations. Accordingly, even if the "not pressed or passed upon" rule is seen as a prudential one rather than a jurisdictional one, the Petition should be rejected.

**2. The Disciplinary Procedures Followed By The Board And The Delaware Supreme Court In This Case Were Consistent With Federal Standards Of Due Process.**

It has been held that, because the interests at stake in lawyer disciplinary proceedings are not considered as fundamental or essential as those at stake in criminal proceedings, a lawyer's federal due process rights "do not extend so far as to guarantee the full panoply of rights afforded to an accused in a criminal case." Razatos v. Colorado Supreme Court, 746 F.2d 1429, 1435 (10th Cir. 1984), cert. denied, 471 U.S. 1016 (1985). Alternatively, this Court has held that some due process standards, such as the necessity of prior notice of the charges to be considered by a disciplinary board, do apply in lawyer disciplinary proceedings. In re Ruffalo, 390 U.S. 544 (1968).

In this case, not only was there no lack of due process accorded the Petitioner, but in fact, the opposite is true, viz., both the Board and the Delaware Supreme Court went to great lengths at several steps in the disposition of the Petitioner's disciplinary case to accomodate him. As one of the Board's early rulings shows, after the Petitioner was served with a factually-detailed Petition For Discipline, which also specifically-enumerated all of the disciplinary charges against him, he failed to file a timely answer. OA, at A. At that point, the Board had the full authority to deem the allegations of the Petition For Discipline as admitted. However, the Board used its discretion to accomodate the Petitioner, allowing him to file a late response to the Petition For Discipline.

When the Board attempted to schedule a pre-hearing conference, both the Board and the ODC made special efforts to solicit the Petitioner's personal input as to that

scheduling, and his only input was by letter indicating that he was "flexible". OA, at C. The Petitioner was then sent written notice of the date of the pre-hearing conference, and he was even personally telephoned at the same time with oral notice of the scheduling. OA, at B.

When the Board ruled that the Petitioner's failure to appear at the pre-hearing conference resulted in deeming the factual allegations of the Petition For Discipline against him, the Board then granted the Petitioner a full hearing so that he could have the opportunity to demonstrate why his failure to appear should not have had this result. PA, at B. Contrary to the Petitioner's averments, the Board entered no "default judgment", but merely deemed the factual allegations of the Petition For Discipline to have been established. Whether the disciplinary violations followed from those allegations was still open to argument at that point. However, when the Board specifically asked the Petitioner to submit a memorandum of law, precisely so that he could give his arguments against the disciplinary violations, he failed to submit anything. Id.

After the Board found that the Petitioner's conduct had violated several of the DLRPC, the Board even granted the Petitioner a second full hearing, so that he could present any mitigating factors to the Board in consideration of sanctions.

Finally, after the Board issued its report on sanctions and the Petitioner sent a letter to the Delaware Supreme Court objecting to the Board's findings, the Petitioner then refused to file a brief before that Court. PA, at K. The Delaware Supreme Court then took an additional step to accomodate the Petitioner, and allowed his informal letters to that court to be deemed as his "opening brief and appendix" instead of ordering him to conform

to the procedural requirements for briefing of matters before the court. PA, at L.

Thus, the Petitioner was given more than adequate procedural consideration at each and every step of the disciplinary process. He was duly notified of the factual allegations being made against him and was duly notified of the specific disciplinary charges being filed. He was notified in writing of each and every hearing. He was asked at several points to submit memoranda of law or briefs in support of his position.

As this Court held in Ruffalo, federal due process requirements mandate that an attorney in a disciplinary process be fully notified and informed as to the allegations and charges being made. The actions of both the Board and the Delaware Supreme Court were fully consistent with this standard, and demonstrated not only toleration of the Petitioner's continued obstreperous conduct but considerable accomodation as well.

The Petitioner has not cited a single federal case in support of his vague "due process" claim, and has cited only a few irrelevant Delaware cases dealing with the penalties (such as an entry of judgment by default) which a tribunal is permitted to issue when a party fails to comply with an order. As stated above, however, when the Board took the step of deeming the factual allegations of the Petition For Discipline as established, in light of his failure to appear for any good reason at the scheduled pre-hearing conference (and after conducting a separate hearing on that issue alone), the Board did not enter a "default judgment" against the Petitioner. OA, at B. Indeed, if the Petitioner had simply filed a proper memorandum of law with the Board, he might have been able to show that the facts admitted into evidence by the Board did not show that he violated any of the DLRPC.

The Petitioner's argument that he was not allowed to subpoena the Chief Justice of Delaware to the scheduled hearing on disciplinary sanctions also shows his misunderstanding of the proceedings. The purpose of the hearing on sanctions was to focus on any aggravating or mitigating factors, after there had already been a finding of misconduct. The testimony of the Chief Justice was simply irrelevant to the issues facing the Board at that point, which focused upon the Petitioner's misconduct, not upon the conduct of persons whom he characterized as his "accusers". In short, the Petitioner's attempt to subpoena the Chief Justice and others was merely another exercise in harassment on his part, which the Board was correct to stop.

In light of the foregoing reasons, and absent any cogent articulation or authority on the Petitioner's part with respect to his "due process" claims, the petition for the writ should be denied.

**3. The Public Reprimand Of The Petitioner For Violation Of Certain Disciplinary Rules, As A Result Of His Sending Of The October Letter, Did Not Violate The Respondent's Freedom Of Speech Rights Under The First Amendment.**

While this Court has held that legitimate criticism of a judge for honest error cannot, consistent with constitutional guarantees of freedom of speech, be cause for attorney discipline, see, e.g., In re Sawyer, 360 U.S. 622 (1959), this Court has long-recognized that attorneys can be required to temper their speech to conform to the standards of professional responsibility. For example, as early as 1872 this Court recognized that a lawyer's obligation to maintain respect for the courts "includes

abstaining out of court from all insulting language and offensive conduct toward the judges personally for their judicial acts." Bradley v. Fisher, 80 U.S. 335, 355 (1872).

Even where the lawyer's insulting statements are directed to a judicial officer in a private letter, the lawyer may be disciplined consistent with constitutional guarantees of freedom of speech. In re Evans, 801 F.2d 703 (4th Cir. 1986), cert. denied, 480 U.S. 906 (1987). In the Evans case, a lawyer was disbarred from the federal district court of Baltimore after he sent a letter to a federal magistrate complaining about the judge's "Jewish bias", and where he later refused to apologize.

Generally, it has been held that constitutionally-permissible disciplinary restrictions on statements about judges involve a determination of "what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances." United States District Court v. Sandlin, 12 F.3d 861, 867 (9th Cir. 1993). It follows that courts may, consistent with constitutional considerations of freedom of speech, require attorneys to speak with greater care and civility than is the norm in, say, political campaigns. Matter of Palmisano, 70 F.3d 483, 487 (7th Cir. 1995). In other words, attorneys who make critical comments about members of the judiciary must do so in a professionally responsible way.

The Board below ruled that the Petitioner's admitted conduct in this case, namely, making reckless statements about the integrity of a judge, fell below the standard of what a reasonable and professionally responsible attorney would have done, and therefore found that the conduct violated certain disciplinary rules and warranted that the Petitioner should be reprimanded. The

Board's actions, as well as those of the Delaware Supreme Court in upholding the Board's findings, were therefore consistent with constitutional principles regarding protected and unprotected speech.

Although the Petitioner presented no argument or authority (other than general references to his constitutional rights) to the Board to refute its findings, and although the Petitioner presented no argument or authority whatsoever (other than general references to his constitutional rights) to the Delaware Supreme Court Court to show that the Board erred, the Petitioner's present petition to this Court finally cites a federal case, namely, Standing Committee on Discipline v. Yagman, 55 F.3d 1430 (9th Cir. 1995). In that case, the court found that an attorney's public statements critical of a judge were protected speech, in part, because they were not proven false at the attorney's disciplinary proceeding. The Petitioner presumably claims that since his allegations of a "racist conspiracy" against the Chief Justice of Delaware were never proven by the ODC to be false, they cannot be considered as having been made in a "reckless" manner, and even further, must be assumed as true. This is ridiculous.

A judicial officer against whom reckless and delusional allegations are made should not have to be put into the absurd position of having to formally answer to such allegations. This approach would turn the entire disciplinary process on its head, by turning the victim of the misconduct into the accused, and by making the accused the victim. Moreover, it sets up a virtually impossible evidentiary burden, since the victim of the reckless allegations is then placed into the position of having to "prove a negative".

For example, suppose that the Petitioner had accused all of the judges in

Delaware of participation in a worldwide illegal drug ring, and of a massive "conspiracy" to cover up that activity. Under the Petitioner's theory, the burden would be upon the ODC to prove that the judges did not engage in such conspiracy. But how could that be proven? If the ODC demonstrated that there was no evidence whatsoever of the judges' participation in any sort of criminal conspiracy, the Petitioner could always counter this by saying that the very lack of available evidence "proved" that the conspiracy did exist, since it demonstrated how efficiently it was being "covered up".

In the present case, there could have been no possible evidence which the ODC could have produced to "prove" that the Chief Justice of Delaware, along with all of the other members of the Delaware legal community, were not engaging in a "racist conspiracy" against the Petitioner. No matter what evidence was produced, and no matter how groundless this claim could have been shown to be, the Petitioner could always maintain that such lack of evidence was, in itself, proof of the "cover up" and the conspiracy against him. Contrary to the Petitioner's position, however, judges need not be put into the absurd position of having to disprove a lawyer's delusional allegations, which are "true" in the lawyer's mind and nowhere else.

Consequently, it is incorrect that the ODC had to "disprove" the Petitioner's allegations of a "racist conspiracy", and that Board had to specifically find that the Petitioner's allegations about the Chief Justice were false. As the authorities cited above have held, the Board only needed to find that the statements had been made in a professionally irresponsible and unreasonable manner, with "reckless disregard" as to their truth or falsity. Given the admissions and the documents in the record which the Board

considered, there was more than adequate evidence for that finding. The Board's actions, as well as those of the Delaware Supreme Court in upholding the Board's findings, were therefore consistent with constitutional requirements.

As pointed out by the court in Palmisano, supra, to the extent that the Yagman case holds that attorneys are permitted to openly excoriate members of the judiciary without proper limitations, the holding in that case is inconsistent with the holdings of this Court. Palmisano, 70 F.3d at 487, citing in support Sawyer, supra, and In re Snyder, 472 U.S. 634 (1985). Accordingly, neither the Board nor the Delaware Supreme Court violated the Petitioner's freedom of speech under the federal constitution.

**4. The Petitioner's Other Claims And Allegations Are Groundless.**

The Petitioner has strewn his petition to this Court, in a virtually "stream of consciousness" manner, with a multitude of miscellaneous allegations and claims, some of which are outright falsehoods, and many of which are misleading. None of these statements, however, justify this Court's issuance of the writ. The following brief comments are therefore offered in response thereto.

As to the claim that the October Letter was an exercise in the Petitioner's right to petition the government for grievances, this is misleading. After the October Letter was sent, the ODC sent a letter to the Petitioner detailing the proper procedures for filing a grievance against a member of the Delaware judiciary or a member of the disciplinary system. PA, at H and I, at paragraph 12 of each. If the Petitioner had had a legitimate grievance, he would have

followed such procedures rather than sending insulting letters directly to the persons he was complaining about. Rather than being a legitimate exercise in petitioning the government, the Petitioner's sending of the October Letter was merely an act of unprofessional harassment on his part. Moreover, the Petitioner has cited no authority, either on the state-court level below or before this Court, which would support his characterization of the October Letter as a legitimate petition to the government, as protected under the federal constitution.

As to the Petitioner's claims that African-American persons are "not allowed to sit on the Board", this is ridiculous and downright false. In addition, the fact that the Petitioner could make such a blatantly untrue statement in a petition to this Court shows how little regard he must have for the truth. The same goes for his assertions that since there are no African-Americans on the Board (which is false), he could get no fair hearing, or that the "common practice" in Delaware is to "get" African-American persons. The character of these illogical statements themselves demonstrate the delusional quality underlying the claims made in the present petition to this Court.

Regarding the claim that the Board scheduled the pre-hearing conference with "full knowledge" that he was busy in a political campaign, this is misleading. The Petitioner was asked several times for his input on scheduling, and he told the Board that he was "flexible". After the conference was scheduled, and after he was given both written and oral notice, all he had to do was pick up the telephone and inform the Board that he was busy running for office at that time, and desired the matter to be rescheduled. All it took was a two-minute

telephone call. Further, there is nothing in the record indicating that the Board knew anything about the Petitioner's political activities, or that the election campaign affected the Board's scheduling in any manner.

As to the Petitioner's claim that no "proceeding" was on-going or disrupted at the time of the October Letter, the documents submitted in the Petitioner's own Appendix show this to be false. PA at C shows that the Petitioner was involved in an on-going effort by one of the agencies of the Delaware Supreme Court, the Clients' Security Trust Fund, in scheduling a required examination of his law office books and records. PA at E shows that the October Letter was rejected by the Delaware Supreme Court in part because it related to a "pending matter" between the Petitioner and the ODC. Therefore, the Board's finding that the sending of the October Letter was disruptive and prejudicial to an on-going proceeding was correct.

Regarding the Petitioner's bizarre claim that the actions of the Chief Justice (or somebody in the Delaware judiciary or disciplinary system) were intended to prevent him from associating with the NAACP, thus depriving him of his "freedom of association", it is difficult to respond because this claim is incomprehensible. Absent some intelligible articulation of this allegation, the ODC merely notes here that it appears to be yet another of the Petitioner's series of delusional claims with no basis in reality.

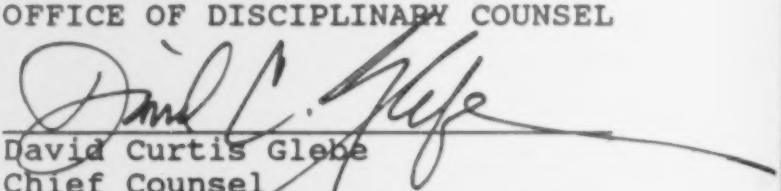
As to the other general comments regarding how the Petitioner is a great leader in the community, a tireless crusader for equal rights for all, and so on, these self-serving claims may be true, but they do not give this Court any ground whatsoever to grant the petition here.

## CONCLUSION

In light of the foregoing reasons, the petition for a writ of certiorari to the Delaware Supreme Court should be denied.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL



David Curtis Glebe
Chief Counsel
(Admitted to the Bar of the U.S. Supreme Court on October 11, 1994)
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DATED: January 11, 1996

# APPENDIX

## APPENDIX A

**Confidential Ruling of the Board on Professional Responsibility of the Supreme Court of the State of Delaware, in Board Case No. 55, 1992 (Matter of Guy), dated January 24, 1994:**

### RULING OF THE BOARD

Two motions are before the Board.

The Office of Disciplinary Counsel filed a motion for leave of parties to file memorandum of law on the issue of sanctions with the Panel of the Board on Professional Responsibility that is assigned to this disciplinary matter. The reason for the motion is that the Respondent had not filed a timely response to the petition and that the allegations in the petition should be deemed to be admitted.

Samuel L. Guy has filed a motion for an extension of time to file a response to the Petition for Discipline, with a response attached to it.

The motion by Samuel L. Guy for leave to file a response is granted and the response included in the motion is deemed to be filed. The motion of Disciplinary Counsel to file memorandum of law on the issue of sanctions is denied.

A prehearing conference shall be held before Board member Harvey B. Rubenstein at a time directed by him.

DATED: January 24, 1994

(signed) CHAIR: Jackson R. Dunlap, Jr. Esq.
P.O. Box 742
Georgetown, De. 19947
Telephone: (302) 856-7361

## APPENDIX B

**Confidential Ruling of the Board on Professional Responsibility of the Supreme Court of the State of Delaware, in Board Case No. 55, 1992 (Matter of Guy), dated April 27, 1994:**

## PRE-HEARING ORDER

A pre-hearing conference was held on April 18, 1994 at 1:30 p.m. at the Supreme Court Conference Room, 11th Floor, Carvel State Office Building, Wilmington, Delaware, before the Chairman and Board Member, Harvey Bernard Rubenstein. Notice of the hearing was given to Disciplinary Counsel and Respondent, Samuel L. Guy, Esquire, by letter dated April 7, 1994. Notice was also given to Respondent by leaving a telephone message to him on April 7, 1994.

Respondent failed to appear at the pre-hearing conference. David Curtis Glebe, Disciplinary Counsel, was present. The Board proceeded with the conference at 1:50 p.m. in Respondent's absence.

In accordance with Superior Court Civil Rule 16(f), and as permitted under Board Rule 15(b), because of his failure to appear at the pre-hearing conference, Respondent shall be deemed to have admitted paragraphs 3, 4, 6, 11, 13, 14, and 16 of the Petition.

The seven letters offered by Disciplinary Counsel that are referred to in the Petition are made a part of the record.

The October 5, 1992 letter of Disciplinary Counsel to the Respondent supports the truth of the matters set out in paragraph 3 of the Petition.

The October 7, 1992 letter of Respondent to the Honorable E. Norman Veasey supports the truth of the matters set out in paragraphs 4 and 6 of the Petition.

The October 22, 1992 letter of Respondent to Disciplinary Counsel supports the truth of the matters set out in paragraph 11 of the Petition.

The Disciplinary Counsel's letter to Respondent, dated December 1, 1992, supports the truth of the matters set out in paragraphs 13, and 14 of the Petition

The Board, upon considering the Petition, Answer, the letters, and the matters deemed admitted by Respondent, finds that there are no material issues of fact as to the matters set out in paragraphs 1 through 16 of the Petition, and, therefore, there shall be no hearing on factual issues.

The parties shall file briefs on the conclusions of law to be drawn from the facts as to the four charges set out in the Petition.

The brief schedule shall be as follows:

Disciplinary Counsel shall file an opening brief on or before May 18, 1994. Respondent shall file an answering brief no later than June 7, 1994. Disciplinary Counsel shall file a reply brief no later than fifteen days after service of the answering brief.

The April 22, 1994 application of Disciplinary Counsel for reargument on the Board's ruling dated January 24, 1994 is denied.

April 27, 1994

(signed) Jackson R. Dunlap, Jr., Esquire

## APPENDIX C

**Excerpts from the Transcript of a Hearing before the Board on Professional Responsibility of the Supreme Court of the State of Delaware, in Board Case No. 55, 1992 (Matter of Guy), held June 13, 1994:**

...

MR. RUBENSTEIN: Mr. Guy, when you closed your office, did you make any provision to receive any kind of message in the event that one of the pending cases might be sent down for a hearing during that period?

MR. GUY: One of what pending cases?

MR. RUBENSTEIN: Any pending case that you may have had.

MR. GUY: Here?

MR. RUBENSTEIN: In Delaware? I mean, suppose somebody tried to reach you in connection with a case that you had, how would they have reached you during that period of time?

MR GUY: There is nobody that is going to have to reach me during the period of time for no pending case. I don't have no big law offices, I don't have no big bunch of pending cases. Before I closed up, I got everything checked, everything all checked out for schedule for dates, everything. No, I didn't have anything coming up during that period of time and then went on and did what I had to do.

MR. RUBENSTEIN: Did you take into account the fact that perhaps something might be set down for that period of time?

MR. GUY: Not that quick. Nobody sets anything down that quick. There is no court case I have where anything gets set down that quick.

MR. RUBENSTEIN: When you say that quick, I believe the notice went out on April 7th for prehearing conference on April the 18th.

MR GUY: Nothing, I don't have anything. Your law office may, or maybe you're not a lawyer, I don't know, maybe one of you aren't a lawyer, somebody told me that. I don't have anything that operates that way, nothing.

THE CHAIRMAN: Do you have a phone answering machine on your telephone at the office?

MR. GUY: I have an answering machine at the house.

THE CHAIRMAN: At the telephone number that's given for your office, do you have an answering service?

MR. GUY: No.

THE CHAIRMAN: On April the 7th did you have an answering service?

MR. GUY: I would probably have forwarded messages to go on a home machine since the office wasn't open.

THE CHAIRMAN: Well, I'm asking you, on the 7th was that in operation?

MR. GUY: It most likely would have been because the office wasn't open.

MR. RUBENSTEIN: Would you have gotten the message on the 7th at your home?

MR. GUY: No, I would have gotten the message once I went back to the office. I was gone.
...

MR. RUBENSTEIN: When you closed your office, Mr. Guy, during those weeks, if someone called your office at the telephone number of your office, would that ring through to your home?

MR. GUY: They would just get to a message. If the machine is on, they get to leave a message.

MR. RUBENSTEIN: And would that message be conveyed to your home rather than to your office?

MR. GUY: Right. Mainly because I don't have no money to have two answering machines.
...

MR. CHAIRMAN: Excuse me, Mr. Guy, really, the point I'm making is that it appears that you did write me around March the 8th stating among other things that you stated, "I am pretty much flexible with respect to scheduling a prehearing conference."

MR. GUY: That's the truth. There is no question about that.
...

MR. CHAIRMAN: The Board after considering the motion of Mr. Guy for a hearing on the factual issues in this case having been considered and from what has been stated for the record is that Mr. Guy during the relevant times around April 7th indicated that he was absent from the office and during his absence there was an answering service and there was the indication from him that telephone calls were also forwarded to his home. He also indicated that the post office box 25464 in Wilmington,

Delaware was used by him for his office mail as well as his personal mail. Taking further that there is a presumption that a letter was mailed and received by the recipient. The respondent further has indicated that he did not receive this message or letter until after the April meeting on the 18th.

The Board considers that the reasons for the respondent not answering the communication is not a reasonable one. Furthermore, as in indicated, a telephone message was left on his answering service on April 17th, 1994 announcing among other things that the pretrial hearing was set for June 13th at 2:00 p.m. at the Supreme Court conference room, 11th floor, State Office Building, Wilmington Delaware. Therefore, the application for a hearing is denied.

However, as stated in the prehearing order, the facts have been deemed to have been admitted and the parties shall have the opportunity to file briefs on the conclusions of law to be drawn from the facts as to the four charges set out in the petition.

...